

Congress of the United States
Washington, DC 20515

January 9, 2014

The Honorable John Koskinen
Commissioner of the Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20004

Dear Commissioner Koskinen:

Congratulations on your confirmation. With your swearing in, the Internal Revenue Service (IRS) has a great opportunity to move forward with its mission to execute a fair, commonsense implementation of the tax code. To this end, we write to urge you to act quickly to provide clarification with regards to the application of the Affordable Care Act to volunteer first responder organizations. This is a growing concern for the volunteer first responder community in Connecticut and states across the country, and we are grateful for your response to Senator Bob Casey (D-PA) during your confirmation hearing that you would address this issue immediately after taking office. We hope the IRS will now move rapidly to provide much-needed clarity and guidance on this issue as soon as possible.

As you are aware, the Affordable Care Act included an employer shared responsibility requirement, which requires employers with more than 50 full time employees to either offer health insurance coverage or pay a penalty if they choose not to. While this requirement has been delayed for 2014, the volunteer first responder community has raised concerns that in 2015, some departments that rely on volunteers may be unnecessarily required to comply with the employer shared responsibility requirement. As members who fully support the successful implementation of the Affordable Care Act, we believe that the IRS must take action to address this issue and clarify that volunteer first responders that receive nominal compensation are not counted as employees toward the employer responsibility requirement.

As you know, volunteer first responders are critical to the safety and security of communities in Connecticut and across America. Close to 9 out of 10 fire departments in the U.S. are staffed by volunteers whose donated services represent over \$100 billion. These are individuals that sacrifice their time and put themselves in harm's way in service to their neighbors. As such, many departments offer nominal benefits to volunteers as an incentive and gesture of appreciation. Understanding that volunteers in these situations often receive nominal compensation, both the Fair Labor Standards Act (FLSA) as well as the Internal Revenue Code (IRC) have definitions of "volunteers" that specifically account for this. In terms of the FLSA, it specifically allows for volunteers to be "...paid expenses, reasonable benefits, a nominal fee, or any combination thereof, for their service without losing their status as volunteers." For the purpose of establishing eligibility for participation in a service award program, the IRS allows that a "bona fide volunteer" be defined as someone who can receive compensation for performing "firefighting and prevention services, emergency medical services, and ambulance services" but only in the form of:

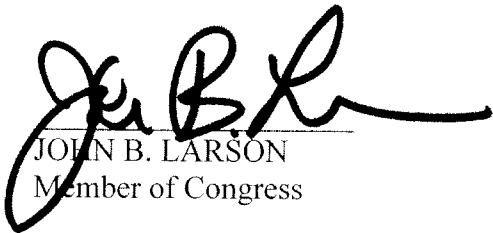
- (I) reimbursement for (or reasonable allowance for) reasonable expenses incurred in the performance of such services, or
- (II) reasonable benefits and nominal fees for such services, customarily paid by eligible employers in connection with the performance of such services by volunteers.

Clearly, there has been a recognition by both the IRS and the Department of Labor of the unique and important role that volunteer first responders play and the need to ensure that nominal compensation does not call into question their volunteer status. However, the current IRC definition of “bona fide volunteer” for the purpose of service award programs does not appear to apply to volunteer departments for the purposes of the employer shared responsibility requirement. As such, many departments are concerned that despite the volunteer status of their first responders, they will be considered “employees” and thus required to comply with the employer shared responsibility requirement.

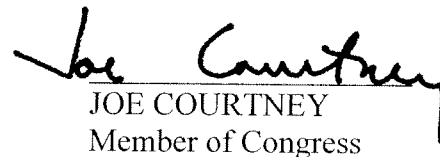
As supporters of the law, we do not believe that there was ever an intention to require volunteer first responders to be counted in the calculation for the employer shared responsibility requirement. Most volunteers work full or part time in other occupations, where they are in many cases already eligible for health care coverage and furthermore there is no expectation that by volunteering that the departments would provide health coverage. Thus, we urge the IRS to use its regulatory authority to either apply the FLSA definition or existing IRC definition mentioned above during the rulemaking process for the employer shared responsibility requirement for 2015. This issue could have significant impacts on volunteer departments across the country if not addressed, so we encourage the IRS to act quickly to clarify this matter.

Thank you very much for your consideration and we would look forward to meeting with you at your earliest convenience to discuss this urgent matter.

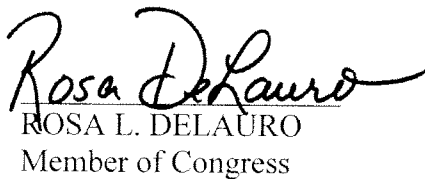
Sincerely,



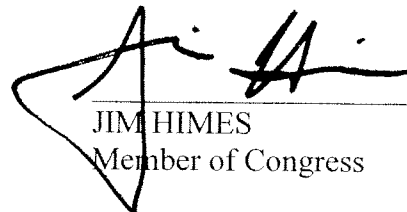
JOHN B. LARSON
Member of Congress



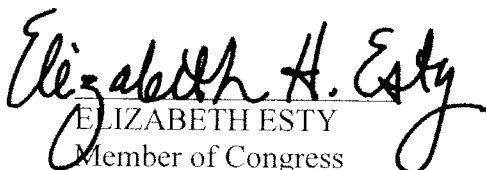
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